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FEDERAL COMMUNICATIONS COMMISSION
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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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| In the Matter of | ) | |
| | ) | |
| Review of the Policy Implications | ) | MM Docket No. 91-221 |
| of the Changing Video Marketplace | ) | |

To: The Commission

COMMENTS OF TELE-COMMUNICATIONS, INC.

Tele-Communications, Inc. ("TCI") submits these comments in response to the Commission's Notice of Inquiry in this proceeding. Although the Commission staff report ("OPP Report") provides a useful framework for examining the "video marketplace," many of its observations require empirical support, and there is no analysis of the potential effects of suggested regulatory reforms.

In 1990 and again earlier this year, the Commission conducted wide-ranging inquiries into the competition faced by cable television and considered a variety of alternative regulatory initiatives. See Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service, MM Docket No. 89-600; Reexamination of the Effective Competition Standard for the Regulation of Cable Television Basic Service Rates, MM Docket No. 90-4. In those proceedings, in which TCI commented extensively, the objective indicia of cable television's performance -- namely, increased output, stable real-unit prices, upgraded cable plant, improved quality and technological advancement -- showed that cable television's response to increasing competition from numerous sources has been consistent with the competitive model. As the Commission then recognized, broadcast television continues to pose formidable competition to cable operators for audiences, programming and advertising.

Although the Commission's current Notice refers generally to the "video marketplace," the OPP Report and the issues identified by the Commission in the Notice focus largely upon the impact on television broadcasters of increasing competition in the video marketplace. Both the OPP Report and the Commission's Notice address primarily the "implications for regulation" of television broadcasters resulting from such competition. Thus, in the first instance, television broadcasters must specifically identify the purported problems caused by current regulation and describe in detail their proposed regulatory responses to those problems. Depending upon the factual record developed in this proceeding, changes in existing regulations to facilitate further participation by television broadcasters and/or networks in the video marketplace may be appropriate.

The OPP Report offers a preliminary framework for the detailed empirical analysis required to evaluate the need for and utility of the varied regulatory initiatives outlined therein. However, the OPP Report contains numerous factual observations which appear to be inconsistent or unsupported. For example, the OPP Report states that "[b]roadcast networks and stations will have declining audiences, revenues and program expenditures in the future," but includes estimates that revenues of the three major broadcast networks will increase from $9.4 billion to $12.2 billion between 1990 and 1995 while their program expenditures will increase from $6.1 billion to $7.9 billion over the same period. OPP Report at 150, 157. In another instance, the OPP Report speculates without any supporting data that "[c]hannel positioning also appears important to the success of broadcast stations, and cable systems can give UHF stations desirable low channel positions." OPP Report at 17. Clearly, these kinds of apparent inconsistencies and assertions cannot provide a basis for regulation.

As the Commission and staff have recognized, the rate of technological change and its consequent impact on competition in the video marketplace appear to be accelerating. At the same time, the Commission and Congress are considering a number of statutory and regulatory initiatives which will affect that marketplace in ways which have not been precisely predicted or measured. Thus, in the past thirteen months, the Commission has adopted or proposed the following changes in regulations, each of which may have substantial and lasting effects on the video marketplace:

(a) adopted rules and proposed further rulemaking to foster the growth of MMDS competition;

(b) adopted rules to redefine its standards for determining the existence of "effective competition" to basic cable service;

(c) received comments on the "must-carry" issues raised in its Second Further Notice of Proposed Rulemaking in the effective competition proceeding;

(d) ruled that interexchange carriers are not subject to telephone company/cable television cross-ownership restrictions and that no local cable television franchise is required by local exchange carriers providing video dialtone or video programmers using the common carrier service;

(e) proposed a video dialtone policy for local exchange carrier participation in the video marketplace; and

(f) initiated a Second Further Notice of Inquiry to determine whether local exchange carriers should be permitted to participate in video programming in "the video dialtone environment."

The cumulative impact of these actual and potential changes in the regulatory environment, coupled with continuing technological advances, may substantially affect competition in the video marketplace.

In short, television broadcasters must precisely define and compellingly demonstrate the purported problems for which they seek regulatory change. Only then can the Commission and other commenters carefully evaluate the necessity and effect of any proposed regulatory changes.

Respectfully submitted,

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